

MEDICAL JURISPRUDENCE†

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Prevention of Malpractice Actions

During the present emergency when the number of patients cared for by most physicians has increased considerably, great care should be taken by all physicians and surgeons to avoid malpractice claims and actions. In this connection, the book "Medical Malpractice," written by a member of the California Medical Association, Louis J. Regan, M.D., LL.B., published this year, contains an exceedingly helpful discussion of the importance of the physician's office nurse in the prevention of malpractice claims. Every physician would be well advised to consider carefully the suggestions made in Doctor Regan's book.

In Chapter XII, page 164, Doctor Regan presents the following discussion:

To protect himself from a legitimate accusation of malpractice, the physician must care for every patient with meticulous attention to the requirements of good medical practice; and he should endeavor, in so far as possible, to be in a position to prove that he has done so in every case. His greatest aid in this respect is the medical case record. This should show what was done and when it was done, and should contain a recording of instructions given the patient, the written history, the physical examination, the reports of laboratory examinations, and the progress record. A good medical case record should make clearly manifest that the case was conducted with the requisite degree of care and skill. The record should also show, if such is the case, that the patient failed to carry out instructions or discontinued treatment prematurely; a good method of establishing this fact is to file a carbon copy of a letter sent the patient, advising against the unwise course. The record cannot be considered complete in any case of real or suspected bone or joint injury, unless it contains a very complete x-ray record of the case. In the event that the patient is subjected to any unusually hazardous treatment, such as fever therapy or shock therapy, the record should also contain a statement signed by the patient, expressing understanding of the nature of the special treatment and consenting to undergo it. Another fact to remember, in order to avoid later difficulty, is that, because of the possibility of error in transmission, it is dangerous to telephone a prescription.

It is obvious that, for the most part, malpractice claims arise out of cases with bad end-results. When a patient has a less than perfect result and is dissatisfied, the situation calls for the exercise of the greatest tact on the part of the physician and his office assistant. For example, the irritation of such a patient by unwise collection efforts may result in the filing of a malpractice action. The friendly patient, the patient who feels that everything that can be done is being done, is not likely to sue his physician. In some cases the calling in of a consultant will serve to restore a more satisfied attitude in a patient who is becoming critical. In all circumstances a consultant affords great protection against a malpractice claim. It is an excellent plan to have a consultant see every patient who is not doing well, and every patient who is complaining of his treatment or expressing dissatisfaction with the progress he is making. The tactful handling of a patient, if it may not be considered an essential and actual part of the medical treatment itself, is at any rate second in importance only to the actual therapy of the case. It is of great importance to the well-being of the patient, and it is exceedingly important in safeguarding the physician against a malpractice claim. Oftentimes the handling of the patient and the patient's family by the office nurse spells the difference between suit and no suit against the physician.

† Editor's Note.—This department of CALIFORNIA AND WESTERN MEDICINE, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from the syllabi of recent decisions and analyses of legal points and procedures of interest to the profession.

* The article opposite appeared in the *Westchester Medical Bulletin*, published by the Medical Society of the County of Westchester, in its November, 1943, *Bulletin*. For editorial reference thereto, see page 303.

The Time Is Now!

What Must Be Done If the Medical Profession Is to Fulfill Its Fundamental Obligation to the American People?—A Plain Call to Action!

The time has come . . . for plain speech, for bold thinking, and for decisive action. Bureaucratic control of medicine in starkest form, with all its obscene implications for the future of medical art and science, is an imminent probability.

Let it now be clearly emphasized that in opposing the injection of political control into the administration of medical service, doctors do not imply any complacent toleration of the *status quo*. The record on that is clear. No other profession or calling has more radically and continuously improved the content and methods of its service than medicine, during the past half century.

Yet, through its ostrich-like policy of inept public relations, the medical profession has permitted itself, during the past fifteen years, to be portrayed to the American people as a selfish vested interest, stubbornly opposing every suggestion or effort by social-minded people to improve the distribution or to reduce the costs of medical care.

Our failure clearly to interpret ourselves, our accomplishments, and our sincere purpose to the American people has rendered the art and science of American medicine exquisitely vulnerable to political manipulation by a bureaucracy seeking new ways of perpetuating its power. Furthermore, Medicine's position of responsibility to the public places it at the mercy of political attack or envelopment.

What *can* be done, . . . what *must* be done, if we are to fulfill our fundamental obligation to the American people, and our responsibility to those who will follow us in our profession?

First, we can, even at this eleventh hour, frankly and honestly tell our own story, utilizing in our own name all the available means and media of modern public relations. If the American Medical Association must forfeit its tax-exempt status for the privilege of interpreting, not itself, but the medical profession to the American people (an assertion which we don't believe and hereby challenge)—then by all means let us buy our chips and get into the game! Is it more important to the welfare of the American people for us to be exempt from taxes than from bureaucratic dictation?

Second, we can, even at this eleventh hour, establish an information and service bureau in Washington, openly dedicated to the need of maintaining a continuous two-way channel of intercommunication between the medical profession and the people, the federal agencies, and legislators who are interested in the services we render. The need for a Washington office for the American Medical Association is so obvious and urgent as to make any further delay in its establishment a matter of criminal negligence, in our opinion.

*Third, we can, even at this eleventh hour, assume our earned and rightful place of leadership in the councils of those who seek to mould the future of our calling. We must certainly expect great and fundamental social changes; we will probably have to accept an increasing degree of proper governmental participation in medical service. But in any case the profession must assert and maintain a definite status in the formulation of all legislation on health and medical matters. Merely to confer with governmental agencies cannot reasonably be construed as evidence that medicine has accepted their theories or philosophies concerning medical service. On the contrary, medicine owes it to the public, as it surely owes it to its own members, to assert its earned leadership in determining its own future. *The time is now!***

* For other reference, see footnote in adjacent column.